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June 9, 2023

VIA ECF

Honorable Nina R. Morrison
United States District Judge
United States Courthouse
225 Cadman Plaza East
Brooklyn, NY 11201

Re: *United States v. Rare Breed Triggers, LLC, et al.*
Civil Action No. 1:23-cv-00369-NRM-RML

Dear Judge Morrison:

Defendants, Rare Breed Triggers, LLC (“RBT”), Rare Breed Firearms, LLC, Lawrence DeMonico and Kevin Maxwell, through undersigned counsel, hereby move, pursuant to Rule 45(d)(3), to quash the subpoena issued by Plaintiff, the United States of America, directed to Rick Vasquez, an expert witness retained by Defendants to testify in this action. Defendants seek the Court’s intervention pursuant to Rule 45(d)(3)(A)(iii), which states, in relevant part, that the court “must quash or modify a subpoena that... (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies.”

Rick Vasquez is an expert on the subject of firearms, and firearms regulations. He has been retained to provide an opinion to Defendants’ attorney for the purpose of rendering legal advice to Defendants. “Confidential communications between a third party representative of the client, such as an accountant or other non-testifying expert, and the client’s attorney . . . may be protected from disclosure if the communications are made on behalf of the client for the purpose of obtaining legal advice.” *In re Grand Jury Subpoenas dated March 9, 2001*, 179 F.Supp.2d 270, 283 (S.D.N.Y. 2001) (citing *Upjohn Co. v. United States*, 449 U.S. 383, 391-92 (1981); *United States v. Schwimmer*, 892 F.2d 237, 243 (2d Cir. 1989); *In re Copper Mkt. Antitrust Litig.*, 200 F.R.D. 213, 217 (S.D.N.Y. 2011); & *United States v. Kovel*, 296 F.2d 918, 922 (2d Cir. 1961)).

Defendants maintain that these are exactly the types of communications that fall within the United States’ subpoena, which requests fourteen broad categories of communications that will invade Defendants’ claim of privilege. (Exhibit A, attached.) By way of example only, the subpoena seeks all communications between Rick Vasquez and RBT from January 1, 2018 to the present regarding the “ARI” and “US Patent Number 10,514,223 B1.” Communications requested by this demand could include privileged communications either after this lawsuit was filed, or in anticipation of the filing of this lawsuit, or in the anticipation of the filing of, or during, prior lawsuits regarding the FRT-15. The same applies to demands for communications, if any, between Rick Vasquez and RBF on these topics, and communications, if any, between Rick Vasquez and Lawrence DeMonico on these topics.

Rick Vasquez also prepared documents and tangible things “in anticipation of litigation or for

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